

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOAN LINTON, SHARON LINTON,)
JAMES LINTON, FRANKLIN LINTON)
III, DIRK LINTON, DANIEL LINTON,)
CHRISTINA LYNN, JASON LINTON, and)
MICHELLE MESERAULL, as surviving)
heirs of **FRANKLIN LINTON, JR.,**) **CIVIL ACTION**
Deceased,)

Plaintiffs,

v.

OWENS ILLINOIS, INC. (sued individually)
and as successor-in-interest to OWENS)
ILLINOIS GLASS COMPANY), and)
OWENS-BROCKWAY GLASS)
CONTAINER INC. (successor-by-merger to)
OWENS-ILLINOIS, INC.),)

Defendants.

No. 4:12-cv-960

CASE BELOW:

Circuit Court of the Twenty-Second
Judicial Circuit, St. Louis City
Case No. 1222-CC-01793

NOTICE OF REMOVAL

Defendants Owens-Illinois, Inc. and Owens-Brockway Glass Container Inc. (“Defendants”), pursuant to 28 USC §§ 1441 and 1446 and Local Rule 81 - 2.03, remove the above-captioned case to this Court and provide notice of same to counsel representing Plaintiffs. In support of their removal, Defendants state as follows:

1. On April 5, 2012, Plaintiffs Joan Linton, Sharon Linton, James Linton, Franklin Linton III, Dirk Linton, Daniel Linton, Christina Lynn, Jason Linton, and Michelle Meseraull, as surviving heirs of Franklin Linton, Jr., deceased, filed their Petition in the Circuit Court of the Twenty-Second Judicial Circuit, St. Louis City, Case No. 1222-CC-01793. (*See Ex. A.*)

2. Plaintiffs allege that Franklin Linton, Jr. developed and died from acute myelogenous leukemia as a result of exposure to benzene, benzene derivatives, and other toxic

substances in Oakland, California. (*See id.* at ¶¶ 1, 4.) Plaintiffs bring claims for negligence of employees (Counts I and II), fraudulent misrepresentation (Counts III and V), wilful and wanton conduct (Count IV and VIII), battery (Count VI), negligence (Count VII and X), strict liability (Count IX), and loss of consortium (Count XII). (*See id.* at 1-34.)

3. As set forth below, this case is properly removed under 28 U.S.C. §§ 1441, 1446 because Defendants have satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332.

I. PROCEDURAL REQUIREMENTS.

4. Removal is timely. Owens-Brockway Glass Container Inc. was served with and received the summons and Petition on April 25, 2012. (*See Ex. A.*) Owens-Brockway Glass Container Inc. removed this action within 30 days after receipt and service of the summons and Petition in accordance with 28 U.S.C. § 1446(b). Owens-Illinois, Inc., through its undersigned counsel, hereby consents to removal.

5. The Circuit Court of the Twenty-Second Judicial Circuit (City of St. Louis) is located within the Eastern District of Missouri. Therefore, venue is proper because this Court in accordance with 28 U.S.C. § 1441(a).

6. Copies of all process, pleadings, and orders served upon Defendants and currently on file in the Circuit Court of the Twenty-Second Judicial Circuit are filed in accordance with 28 U.S.C. § 1446 and Local Rule 81-2.03. (*See Ex. A.*)

7. A copy of this Notice of Removal is being served upon Plaintiffs and is being filed with the Circuit Court of the Twenty-Second Judicial Circuit (City of St. Louis) in accordance with 28 U.S.C. § 1446(d).

II. JURISDICTIONAL REQUIREMENTS.

8. Federal jurisdiction exists over this action based upon diversity of citizenship under 28 U.S.C. §§ 1332 and 1441 because this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000.

9. Complete diversity of citizenship exists. Plaintiffs reside in Missouri. (*See* Ex. A ¶ 4.) Owens-Brockway Glass Container Inc. is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Ohio. Owens-Illinois, Inc. is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Ohio.

10. The amount in controversy exceeds \$75,000. The Petition demands, at a minimum, damages in excess of \$450,000 on twelve separate counts. Furthermore, jury awards to plaintiffs for wrongful death actions in the Circuit Court of the Twenty-Second Judicial Circuit (City of St. Louis) generally exceed \$75,000.00. *See Rodgers v. Wolfe*, No. 4:05-CV-01600-ERW, 2006 WL 335716, at *3 (E.D. Mo. Feb. 14, 2006) (denying motion to remand).

WHEREFORE, Defendants Owens-Illinois, Inc. and Owens-Brockway Glass Container Inc., pursuant to 28 USC §§ 1441, 1446 and Local Rule 81 - 2.03, remove this action from the Circuit Court of the Twenty-Second Judicial Circuit (City of St. Louis) to the United States District Court for the Eastern District of Missouri.

Dated: May 25, 2012

Respectfully submitted,

RASMUSSEN WILLIS DICKEY & MOORE, LLC

By: /s/ Randolph G. Willis
Randolph G. Willis Mo. Bar No. 47834
9200 Ward Parkway, Suite 400
Kansas City, Missouri 64114
Telephone: (816) 960-1611
Facsimile: (816) 960-1669
rwillis@rwdmlaw.com

Matthew Fischer
Edward Casmere Mo. Bar No. 64326
Brian O. Watson
SCHIFF HARDIN, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
Telephone: (312) 258-5784
Facsimile: (312) 258-5700
mfischer@schiffhardin.com
ecasmere@schiffhardin.com

*Counsel for Defendants Owens-Illinois, Inc.
and Owens-Brockway Glass Container Inc.*

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on May 25, 2012, a copy of the Notice of Removal was served by depositing it in the U.S. Mail, proper postage prepaid, addressed to the following:

Randy L. Gori
Barry Julian
Gori Julian & Associates, P.C.
156 N. Main St.
Edwardsville, IL 62025

Amy M. Carter
Simon Greenstone Panatier Bartlett, PC
3232 McKinney Ave., Suite 610
Dallas, Texas 75204

Attorneys for Plaintiffs

/s/ Randolph G. Willis